

MEMORANDUM OF UNDERSTANDING

This Memorandum Of Understanding (“MOU”), entered into this 22nd day of January, 2003, is the basis upon which a definitive settlement agreement (and supporting documentation) will be entered into between Health Midwest, a Missouri public benefit nonprofit corporation, and Jeremiah (Jay) Nixon, Attorney General of the State of Missouri (“AG”).

1. Immediately upon execution of this MOU, discovery proceedings will cease in Health Midwest v. Nixon, Case No. 02CV326118 (Cir. Ct., Cole County, Missouri) (the "Missouri Litigation"). Health Midwest and the Attorney General shall dismiss immediately the Missouri Litigation, with each party reserving, however, the right to contest later if necessary the issues relating to “proceeds.” It is the parties’ intent that the Health Midwest/HCA Inc. transaction as identified in the Asset Purchase Agreement dated as of November 22, 2002, as amended, (the “APA”) may close without legal challenge from the Attorney General.

2. A new Missouri public benefit non-profit corporation, which will be a tax-exempt organization (the “Foundation”), will be established to receive and administer those proceeds of the sale of Health Midwest assets not retained by Health Midwest pursuant to Section 3 below. The Foundation will exist in perpetuity and a super majority vote of its Board shall be required before spending principal, except to the extent such expenditures are required by law. The Purposes of Foundation will be as stated in the form attached as Exhibit A, and will define a service area equal to, but no larger than, the areas directly served by Health Midwest. The parties will agree on a means of focusing and limiting the Board’s actions in relation to these purposes for an initial period and until the Board has informed itself through a needs assessment process and the development of a charitable giving plan.

3. Health Midwest will continue to manage both the retained operating companies as defined in the APA and the retained real estate under the APA, and to oversee the wind-down activities. Certain liabilities will be retained by Health Midwest, as provided in the APA, and funds will remain with Health Midwest to service those liabilities, as well as to protect the ability of the operating companies to continue services. The proceeds of the sale, after payment of the expenses thereof, and certain liabilities, will be allocated to the Foundation. Health Midwest shall consult with the AG regarding decisions or expenses which will or may materially affect the amount or timing of distributions to the Foundation. The parties intend that an initial distribution will be made to the Foundation as soon after closing the APA as practicable, and that a final distribution will be made when the wind-down activities have been completed. Structure and governance of Health Midwest will not change under this agreement, but a change of corporate purposes of Health Midwest may be necessary or desirable. Health Midwest shall provide a detailed accounting to the AG of Health Midwest's receipt of proceeds of the sale, expenditures and allocations therefrom; and net proceeds available for distribution to the Foundation. These reports and documentation reasonably related thereto, shall be provided to the AG on an ongoing basis during the wind-down activities.

4. The initial Foundation Board will be 25 persons, 19 of whom must be residents of Cass, Lafayette or Jackson Counties in Missouri (the "Missouri Service Area"), and 6 of whom must be residents of Johnson, Wyandotte or Allen Counties in Kansas (the "Kansas Service Area"). Two positions will be eliminated from the Board in each of the first three years. Thus, after the initial three years, the Board will consist of 19 members, 15 of whom must be residents of the Missouri Service Area, and 4 of whom must be residents of Kansas Service Area. Persons who are "public officials" are not eligible to serve as Board members.

5. The initial Board will be appointed as follows: Health Midwest may nominate 14 persons. The CAC Appointing Authorities identified below in paragraph 11 (not including the AG) shall nominate 22 individuals. The AG shall select 8 directors from among the persons nominated by Health Midwest and 8 directors from among the persons nominated by the CAC Appointing Authorities. The remaining 9 directors will be appointed by the AG following an outreach program of his design. The directors on the initial Board of Directors will be appointed in three classes, to phase into staggered terms (7 in the first class (1 year initial terms), 9 in the second class (2 year initial terms), and 9 in the third class (3 year initial terms)). The AG may reject any nominee “for cause”, and such nomination will be replaced by the nominating party. For this purpose, “cause” shall mean a felony conviction, the existence of a warrant for the person’s arrest for violations of law other than violations of motor vehicle laws and regulations, unsatisfied and overdue tax obligations which are not being contested in good faith and unsatisfied student or other government loan obligations which have not been discharged in bankruptcy. With respect to the nominees provided by CAC Appointing Authorities, individuals so nominated but not appointed to the Board by the AG will become members of the initial CAC.

6. With regard to the appointments made from the nominees provided by Health Midwest, 2 of the appointments will serve in the first class, 3 of the appointments will serve in the second class, and 3 of the appointments will serve in the third class. With regard to the appointments made from the nominees provided by the CAC Appointing Authorities, 2 of the appointments will serve in the first class, 3 of the appointments will serve in the second class, and 3 of the appointments will serve in the third class. With regard to the appointments made by the AG, 3 of the appointments will serve in the first class, 3 of the appointments will serve in the

second class, and 3 of the appointments will serve in the third class. The AG shall designate the class to which all appointments are made at the time of their appointment.

7. All nominees for appointment to the initial Board, all appointments to the initial Board, all appointments to the CAC, and all nominations made by the CAC shall be made in consideration of ensuring that the Board and the CAC collectively represent the gender, racial, cultural, geographic, socio-economic and ethnic diversity of the Foundation's Service Area. The Appointing Authorities to the CAC collectively bear the responsibility for the make-up of the CAC in this regard. The CAC, in making nominations for future vacancies on the Board, bears the responsibility not only for perpetuating the diversity of the Board in all respects set forth above, but also for ensuring that each nominee has demonstrated expertise, education, or experience in the provision of health care, asset management and investment strategies, philanthropic administration, or community health care, and that the Board as a whole possesses the necessary skills in asset management, philanthropic administration, and in assessing and improving health care in the communities served by the Foundation to enable the Board to fulfill its responsibilities.

8. The Attorney General will conduct interviews of nominees and all others under consideration, and Health Midwest will be permitted to participate in those interviews and offer to the Attorney General its perspective with respect to the qualifications of the candidates.

9. All vacancies occurring after the initial appointments are to be filled by the Board, electing from nominees provided to the Board by the CAC.

10. The initial, and all subsequent Boards, will have an affirmative obligation to design and maintain an educational process for all Board and CAC members concerning their

responsibilities to the Foundation and its purposes, the identified needs of the metropolitan communities it serves, as well as the requirement continually to re-assess those needs.

11. All Health Midwest Directors not selected for the initial board may participate as ex-officio, non-voting members of the Foundation Board for the first year for the purpose of providing insight and perspective to the Board.

12. The Community Advisory Committee shall consist of 24 persons, all of whom shall serve three year terms. Terms shall not be staggered and no person shall serve more than two consecutive terms. The initial appointments to the CAC will be made as provided above, except that an Appointing Authority whose nominee was appointed to the initial Board must appoint a replacement to maintain the ratios provided below. The initial appointments to the CAC shall be made by the following authorities and in the following numbers: Mayor of Lexington (1), Mayor of Belton (1), Mayor of Harrisonville (1), Mayor of Kansas City, Missouri (7), Mayor of Independence (3), Mayor of Lee's Summit (2), the Jackson County Executive (2), the chair of the Johnson County, Kansas County Commission (3), the Mayor of Iola, Kansas, (1), the Chief Executive of the Kansas City, Kansas, and Wyandotte County, Kansas Unified government (1), and the Missouri AG (2). After the expiration of the initial terms, successor appointments will be made as provided above, except that the Attorney General shall have a single appointment and the Mayor of Kansas City, Missouri shall have 8 appointments. After the expiration of the second term, the AG shall not make any further appointments to the CAC except as provided below in paragraph 12, and the number of appointments by the Jackson County Executive shall be increased to 3. All appointments to the CAC shall be made so that there are 19 members of the CAC from the Missouri Service Area and 5 members from the Kansas Service Area. Appointments made by each Mayor and County executive shall be subject

to the advice and consent of their respective legislative bodies. Persons who are "public officials" are not eligible to serve as CAC members. The CAC shall act only by and through the vote of not less than 14 of its members. In addition to its role in nominating persons to fill vacancies on the Board, the CAC shall review not less than annually the performance of the Foundation in meeting its purposes as well as provide the Board with its perspective as to future actions and emphasis for the Foundation.

13. If any Appointing Authority fails to make a timely appointment to the CAC, the Attorney General shall make the appointment from the appropriate community. If, at any time following the appointment of the initial CAC, the Attorney General determines that the CAC lacks appropriate diversity or has become otherwise unable to fulfill its function, he may petition the Circuit Court of Jackson County for an order dissolving the sitting CAC and compelling the Appointment Authorities to make appointments to reconstitute the CAC.

14. The Foundation will subject itself to the Missouri Sunshine Law insofar as it can be made applicable to the Foundation's activities, and the Articles will include such additional exceptions beyond those in the Law as are necessary to protect the CAC processes of identifying qualified individuals to be nominated to fill Board vacancies and to protect the deliberative process relating to the Foundation's grant-award activities. It is the intent of the parties that the exceptions be created so that deliberations on matters such as investments, grants, appointments of board members and staff will not become matters of public record even if otherwise required to be by provisions of the Sunshine Law. The Attorney General shall have the authority to enforce this provision.

15. For an initial period, the Articles and Bylaws of the Foundation may only be amended with the written consent of the AG, and following this initial period only with the majority vote of both the Board and the CAC.

16. The Board will make all program funding decisions based on its assessment of the need of the communities it serves. It is expected that these decisions will meet the following spending targets on a three-year rolling average:

1. not less than 10% of the spending will benefit residents of Kansas;
2. In addition to the preceding target, 70% of the spending to the urban core of the service area in both Kansas and Missouri, and 30% of the spending outside of that urban core.

Annual reports from the Board to the public, the AG, the Attorney General of Kansas, and the CAC will identify the Foundation's progress in reaching these goals. These targets will be adjusted, with the consent of the AG required, on application by the Board following the completion of the Foundation's community needs assessment, and the development of a charitable giving plan. The Foundation may further apply to the AG to amend these targets based on changing needs not more than every 5 years. The AG shall approve requested adjustments if supported by sufficient data to indicate the reasonableness of such request.

17. The Attorney General supports the independence of the existing hospital foundations, but has not found nor been presented any basis for any claims by the foundations to the sale proceeds of the sale to HCA. Accordingly, on condition of a complete release by each such foundation of any claims against Health Midwest and any claims to the proceeds, Health Midwest will offer each such foundation, effective upon the closing of the APA, (1) to resign as the sole member, (2) to release the foundation from liabilities under Asset Purchase Agreement (not including liabilities for breach of any non competition covenants) and (3) to cooperate with

the Attorney General in seeking that HCA exclude these foundations from the reach of the non-compete provisions of the Asset Purchase Agreement.

18. The parties understand that the AG and HCA are in discussions regarding covenants under the APA.

19. In exchange for a charitable contribution to be made by Richard W. Brown to the Missouri Foundation created as a result of the sale of Health Midwest to HCA in an amount equal to 50% of the 2002 salary of \$1,034,493 or \$517,247, subject to terms and conditions listed below, AG agrees permanently and forever to remove, withdraw and or refrain from asserting any challenge to the propriety of any compensation, retirement benefit, fringe benefit or severance due Richard W. Brown under the terms of his employment with Health Midwest, including but not limited to his January 1, 1999 employment contract as well as any compensation, retirement benefit, fringe benefit or severance due any Health Midwest employee including, but not limited to, James Strieby, Thomas Langenberg, Joseph Hiersteiner, Linda Ward, Steven Wilkinson, Barry Seward, Patrick Patterson, Steven Newton, Darrell Moore, Max Jackson, M.D., J. Kent Howard, Kevin Hicks, Thomas Cranshaw, Michael Chappelow and Gaylia Bond. Under no circumstances shall compensation issues of individuals identified herein be raised or litigated in *Health Midwest v. Nixon*, Case No. 02CV326118 (Circuit Court of Cole County, Missouri) or in any other litigation that may arise out of the sale of Health Midwest to HCA.

(a) The parties agree to the following terms and conditions to the charitable payment described in paragraph 19:

(1) Said payment is contingent upon Brown's receipt of formal communication confirming the tax exempt 501(c)(3) status from the IRS for the resulting Missouri Foundation;

(2) Purposes of the resulting Foundation shall be substantially similar to the purposes of existing Health Midwest or those purposes agreed upon in the related MOU between Health Midwest and AG at paragraph 2.

(3) The payment called for from Richard W. Brown to the resulting Missouri Foundation is contingent upon his receipt of all monies due under his January 1, 1999 employment contract with Health Midwest. To the extent, Richard W. Brown's compensation remains an issue in the ongoing Kansas litigation, *Health Midwest v. Stovall*, Case No. 02-CV-08043 in the District Court of Johnson County, Kansas, the parties agree that no payment contemplated herein will be due until the Kansas litigation and all appeals are resolved without impacting Richard W. Brown's entitlements to compensation, retirement, fringe benefits or severance pursuant to his January 1, 1999 Employment Contract. The parties further agree that upon Richard W. Brown's receipt of sufficient funds due him under the January 1, 1999 Employment Agreement to fund the charitable contribution in Paragraph 19, the payment in full (\$517,247) shall be placed in an escrow account with terms sufficient to insure payment to the Foundation immediately upon both the final resolution of the Kansas litigation and the recognition of the tax exempt status of the Foundation as a 501(c)(3) organization by the IRS. Said escrow account shall be interest bearing with all interest earned remaining the property of Richard W. Brown. If the end result of the Kansas

litigation is the permanent loss of any or all such compensation and benefits due Richard W. Brown under his January 1, 1999 Employment Contract or if the IRS fails to issue a favorable determination letter recognizing the Foundation as a 501(c)(3) tax exempt organization, then no payment need be made to the resulting Missouri Foundation.

(b) The parties specifically acknowledge that Richard W. Brown affirmatively denies that any compensation, retirement, fringe benefit or severance due him or any other individual identified in Paragraph 19 was improper and or excessive. Richard W. Brown's compensation was determined in accordance with Health Midwest policy and procedure which included reasonableness opinions from outside consultants well versed in Executive Compensation of similarly situated not for profit health care systems, as well as outside legal counsel with final approval by independent, disinterested Directors.

(c) Upon receipt by the Missouri Foundation of the full payment from Richard W. Brown as provided in Paragraph 19, and in consideration of the agreements, understandings and undertakings contained herein, the Attorney General shall release and forever discharge Richard W. Brown, and his agents, servants, representatives, heirs, executors, estate and all employees of Health Midwest of and from any and all past, present and future claims, demands, litigation, actions, causes of action, damages or costs which the Attorney General now has or hereafter may have relating to the payment of compensation, retirement, fringe benefits or severance to Richard W. Brown and other individuals identified herein.

HEALTH MIDWEST

ATTORNEY GENERAL, STATE OF MISSOURI

By _____

By _____